

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4411 OF 1992

1. The Rubber Products Limited
a Company registered under
the Companies Act, 1956 and
having its registered office
at Plot No.28, Wagle Indu-
strial Estate, Thane 400 605
2. Laxman Sheena Shetty, Bombay
Indian Inhabitant, Managing
Director and shareholder of
the 1st Petitioner Company
having its office at Plot No.
C-44, Road No.28, Wagle Indu-
strial Estate, Thane 400 604 .. Petitioners.

V/s.

1. Union of India
2. The Assistant Collector of
Central Excise, Range I,
Thane Division I, having his
office at B-91, Main Road,
New Central Excise Building,
Wagle Industrial Estate,
Thane 400 604
3. The Collector of Central Excise
Bombay III, having his office
at Navprabhat Chambers, 5th
Floor, Ranade Road, Dadar,
Bombay 400 028 .. Respondents.

Mr.Manoj Sanklecha, Advocate i/b. M/s.Mulla & Mulla
& C.B.C. for the petitioners.

Mr.A.S. Rao, Advocate i/b. Mr.T.C. Kaushik for the
respondents.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 4TH MAY, 2005.

ORAL JUDGMENT (Per J.P. Devadhar, J.)

1. The petitioners have challenged the order passed by the Assistant Collector of Central Excise dated August 12, 1992 mainly on the ground that the said decision has been passed ignoring the binding decision of the Collector (Appeals) dated March 14, 1988.

2. The petitioners are engaged in the manufacture of vaccum brake hoses (hereinafter referred to as 'the said goods'). These goods are used for vaccum brake application of wagons in Railways. The Assistant Collector of Central Excise by his order dated March 25, 1986 had classified these goods under chapter heading 4009.92 of the Central Excise Tariff. On appeal filed by the petitioners, the Collector of Central Excise (Appeals) by his order dated March 14, 1988 held that the said goods are classifiable under chapter heading 4009.99 of the Central Excise Tariff as claimed by the petitioners and not under chapter heading 4009.92 of the Central Excise Tariff as decided by the Assistant Collector of Central Excise. The Revenue filed further appeal against the said order before the CEGAT, but the same was dismissed on the ground of delay in filing the appeal. It is not in dispute

that the respondents have accepted the said classification and have refunded the Central Excise duty to the petitioners that became refundable in implementation of the order dated March 14, 1988 passed by the Collector of Central Excise (Appeals).

3. On July 26, 1991 when the petitioners filed classification list classifying the said goods under chapter heading 4009.99 of the Central Excise Tariff for the subsequent period, the respondents instead of approving the classification list as decided by Collector (Appeals) issued a show cause notice on January 16, 1992 calling upon the petitioners to show cause as to why the said goods should not be classified under chapter heading 4009.92. The petitioners in their reply submitted that the goods manufactured by them are not designed to perform the function of conveying air and that the classification issue is concluded by the decision of the Collector (Appeals) dated March 14, 1988 and the same was binding upon the Assistant Collector. However, by an order dated August 12, 1992 the Assistant Collector of Central Excise held that the said goods are classifiable under chapter heading 4009.92 of the Central Excise Tariff. Challenging the said order the petitioners have filed the present petition.

4. Although several arguments were advanced by Mr.Sanklecha, learned counsel appearing on behalf of the petitioners, this petition must succeed only on the ground that the impugned order is contrary to the binding decision of the Collector (Appeals) dated March 14, 1988. As rightly contended by Mr.Sanklecha the classification of the goods upheld by the appellate authority is binding on the lower authorities and the judicial discipline demands that the order of the appellate authority must be scrupulously followed by the lower authorities unless there has been change in law or facts. In this connection, Mr.Sanklecha relied upon the decision of the Supreme Court in the case of Union of India V/s. Kamalakshi Finance [55 ELT 433], two decisions of this Court in the case of Camlin Private Limited V/s. Union of India [(1982) 10 ELT 1] and the decision in the case of Prakash Construction and Engineering Company V/s. Union of India [56 ELT 58 (Bombay)].

5. Mr.A.S. Rao, learned counsel appearing on behalf of the respondents, however, submitted that there can be no estoppel in the matter of taxation and even though the Collector (Appeals) had classified the goods under one heading it is open to the lower authorities to subsequently classify the said goods under some other heading in the light of

additional evidence collected in the matter. He submitted that in the present case, in the light of additional material placed before him and in the light of various definitions and technical literature about the product which was not considered by the appellate authority, the Assistant Collector was justified in holding that the goods manufactured by the petitioners were classifiable under chapter heading 4009.92 of the Central Excise Tariff.

6. On perusal of the impugned order, it is seen that the Assistant Collector committed an error in holding that the decision dated March 14, 1988 passed by Collector (Appeals) would be binding for that period only which is covered by the order in appeal. It is well established in law that even in classification matters the decisions of the appellate authority would be binding on the lower authorities for the subsequent period as well, unless there is change in law and there are additional facts which have come to light subsequent to the order passed by the appellate authority. In the present case, there is neither change of law nor additional facts relating to the manufacture of the goods in question, which have come to light subsequent to the order passed by the Collector (Appeals). The technical literature like Encyclopedia of Sciences and

Technology, Vol.I of Mc.Grew Hill Publications cannot be said to be additional material, because, these materials are general in nature and do not pertain to the goods manufactured by the petitioners. Moreover, these materials were available even at the time when order in appeal were passed by the Collector (Appeals). The fact that these materials have not been specifically set out in the appellate order, it does not mean that the goods manufactured by the petitioners are liable to be classified as per the technical literature. Therefore, the Assistant Collector was clearly in error in holding that the decision of the Collector (Appeals) would be binding only for that period which is covered by the order in appeal.

7. Even assuming that the technical literature relied upon by the Assistant Collector constituted additional material, the same can at best be a possible view, but so long as the view taken by the appellate authority is not disturbed by any competent authority, the lower authority will be bound by the decision taken by the appellate authority. In the present case, in view of the clear finding given by the Collector (Appeals) that the vacuum brake hoses manufactured by the petitioners are not used as a continuous carrier of air, it was not open to the

Assistant Collector to ignore the binding decision and rely on the above technical literature and hold that the goods manufactured by the petitioners are used as a continuous carrier and classify the said goods under Chapter heading 4009.92 of the Central Excise Tariff. Therefore, the findings given by the Assistant Collector in ignoring the binding decision of the Collector (Appeals) and classifying the goods manufactured by the petitioners under Chapter heading 4009.92 solely based on the technical literature cannot be sustained.

8. In this view of the matter, we quash and set aside the impugned order dated August 12, 1992 passed by the Assistant Collector of Central Excise, Thane - I. Rule is made absolute in terms of prayer clause (a) and (b) of the petition with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)